A

Reventharen a/l Suppiah v Bar Council Malaysia

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(A)-1875–10 OF 2021
LEE SWEE SENG, HASHIM HAMZAH AND LIM CHONG FONG JJCA
4 DECEMBER 2023

C

Legal Profession — Professional discipline — Restoration to Roll of Advocates and Solicitors — Whether High Court erred in dismissing disbarred lawyer's application to be restored to the Roll — Whether High Court had mistakenly considered wrong facts and had not sufficiently considered relevant facts in D *exercising discretion to disallow the application — Legal Profession Act 1976 s 107(1)*

The respondent's disciplinary board ('DB') had struck the appellant, a sole proprietor, off the Roll of Advocates and Solicitors ('the Roll') during his 19th E year in practice after he admitted his misconduct in a conveyancing transaction. In the said transaction, in which he had acted for the purchaser, the appellant had failed to transfer the balance purchase price of RM247,500 under a property sale and purchase agreement to the vendor's solicitor. Following the purchaser's lodging of a complaint to the DB over the matter, the F appellant informed the DB that he had already forwarded the balance purchase price to the vendor's solicitor and completed the transfer of the property to the purchaser. Despite his profuse apologies over the misconduct, the DB summarily determined the complaint and struck the appellant off the Roll. Three years later, the appellant applied to be reinstated to the Roll but the High G Court dismissed his application. Two years thereafter, he made a second similar application, which also ended in failure. In that second application, the appellant contended that he was unemployed and could not get gainful employment due to his age. He said he had to rely on his savings and support from family members. He expressed remorse over his misconduct and pleaded H to be given a second chance. The appellant supported his application with testimonials and certificates of good conduct from several senior members of the Bar. The respondent, however, opposed the appellant's reinstatement. The High Court dismissed the reinstatement application after holding, inter alia, that: (a) the appellant's affidavit in support did not show that he was remorseful I or that he had repented and rehabilitated; (b) the respondent's evidence that there were other pending complaints against the appellant which had yet to be acted upon raised grave doubts over whether the appellant was a fit and proper person to be re-admitted to the Bar; (c) the appellant's age, his difficulty in getting employment, the length of time he had remained disbarred and the

testimonials of good character that were produced were in themselves irrelevant in determining the application; and (d) in the public interest and in view of the fact that the misconduct committed by the appellant was 'too prevalent', it was necessary for the court to dismiss the application to discourage other potential offenders from committing such misconduct. The instant appeal was against the High Court's decision.

Held, unanimously allowing the appeal, setting aside the High Court's decision and ordering the appellant to be reinstated to the Roll:

(1) Every reinstatement case was unique and had to be decided based on its particular and peculiar facts without preconception (see para 27).

(2) The High Court judge had wrongly found that the appellant had in his supporting affidavit stated that his wrongdoings 'were minor issues of misconduct' and that therefore this did not reflect remorse on the appellant's part. This phrase was in fact stated only in the appellant's letter dated 19 August 2014 to the DB. In the appellant's affidavit in support, he actually stated that he was well aware that what he did was wrong, that he regretted his wrongdoing and the inconvenience and problems it caused to his client and that he regretted and apologised for the same (see para 28).

(3) The High Court judge had downplayed the length of time the appellant had been disbarred. The appellant had been disbarred for some eight years (and not five years as found by the judge) and this was an adequate length of time considering the misconduct that was committed and the fact that the appellant had fully paid the RM247,500 to the vendor's solicitor and completed the transfer of the property to his client fairly soon after the complaint to the DB was lodged. The appellant had also unreservedly tendered his penitence in his affidavit in support. No criminal charges were preferred against the appellant. There was no conviction or sentence. This court also took into consideration the fact that the appellant was unemployed and that he was 68 years old and might not have many more years left to practise. This fact had seeminly not been appreciated by the High Court judge (see paras 29–32).

(4) The court below gave undue weight to previous complaints made against the appellant which had been suspended or kept in abeyance because of his striking out from the Roll. Disciplinary charges based on previous complaints should not be preferred against the person concerned in installments especially after he had been restored to the Roll. The High Court judge had expressed concern that the appellant might repeat his misconduct. However, that concern, which was shared by the respondent, was sufficiently addressed by the appellant's undertaking before this court that should his application for restoration

be allowed, he would no longer act as signatory to any client's account of any legal firm under which he would be practising (see paras 33–34).

(5) The testimonials and certificates of good character from senior members of the Bar that the appellant produced in support of his instant application were sufficient in the circumstances of the case to demonstrate the appellant's penitence and commitment to uphold and maintain the high standards of the Bar (see para 35).

(6) The appellant had met the requirements of change of character, penitence and restitution set out in *Chan Chow Wang v Malaysian Bar* [1986] 2 MLJ 159 and accordingly it was fair and reasonable to reinstate him in the circumstances of the case subject always to the appellant's undertaking and condition that he would not be a signatory to any client's or office account of any legal firm under which he would be practising (see para 36).

[Bahasa Malaysia summary

Responden yang merupakan Lembaga Disiplin responden ('LD') telah mengeluarkan perayu yang merupakan pemilik tunggal dari Daftar Peguambela dan Peguamcara ('Daftar') semasa tahun ke-19 beramal sebagai peguam setelah mengakui perbuatan salah lakunya dalam transaksi conveyancing. Dalam transaksi tersebut ketika bertindak untuk pembeli, perayu telah gagal untuk memindahkan baki harga pembelian sebanyak RM247,500 di bawah perjanjian jual beli hartanah kepada peguam cara vendor. Susulan aduan pembeli kepada LD mengenai perkara itu, perayu memaklumkan LD bahawa dia telah membayar baki harga pembelian kepada peguam cara vendor dan menyelesaikan pemindahan hartanah itu kepada pembeli. Walaupun beliau memohon maaf atas salah laku itu, LD secara ringkas memutuskan aduan itu dan mengeluarkan perayu daripada Daftar. Tiga tahun kemudian, perayu memohon untuk dikembalikan semula kepada Daftar tersebut tetapi Mahkamah Tinggi menolak permohonannya. Dua tahun selepas itu, beliau membuat permohonan yang sama untuk kali kedua, yang juga berakhir dengan kegagalan. Dalam permohonan kedua itu, perayu berhujah bahawa dia menganggur dan tidak boleh mendapat pekerjaan kerana usianya. Katanya, dia terpaksa bergantung kepada simpanan dan sokongan ahli keluarga. Dia melahirkan rasa kesal atas salah lakunya dan memohon diberi peluang kedua. Perayu menyokong permohonannya dengan testimoni dan sijil kelakuan baik daripada beberapa anggota kanan Majlis Peguam. Walaubagaimanapun, responden membantah pengembalian semula perayu ke Daftar tersebut. Mahkamah Tinggi menolak permohonan pengembalian semula itu setelah memutuskan bahawa, antara lain: (a) afidavit sokongan perayu tidak menunjukkan bahawa beliau menyesal atau berubah; (b) keterangan responden bahawa terdapat aduan lain yang belum selesai terhadap perayu yang masih belum diambil tindakan menimbulkan keraguan sama ada perayu adalah orang yang sesuai dan wajar untuk diterima semula ke

Badan Peguam; (c) faktor umur perayu, kesukarannya untuk mendapatkan pekerjaan, tempoh masa dia tidak beramal dan testimoni perwatakan baik yang dikemukakan adalah tidak relevan untuk menentukan permohonan tersebut; dan (d) demi kepentingan awam dan fakta bahawa salah laku yang dilakukan oleh perayu adalah 'terlalu berleluasa', adalah perlu bagi mahkamah untuk menolak permohonan itu untuk menghalang pesalah lain daripada melakukan salah laku sedemikian. Rayuan ini adalah untuk keputusan Mahkamah Tinggi tersebut.

Diputuskan, sebulat suara membenarkan rayuan, mengenepikan keputusan Mahkamah Tinggi dan memerintahkan nama perayu dikembalikan ke Daftar:

(1) Setiap kes pengembalian semula adalah unik dan perlu diputuskan berdasarkan fakta-fakta tertentu dan khas tanpa prasangka (lihat perenggan 27).

(2) Hakim Mahkamah Tinggi telah tersalah arah apabila memutuskan bahawa perayu dalam afidavit sokongannya menyatakan bahawa kesalahannya 'adalah isu kecil salah laku' dan oleh itu tidak mencerminkan penyesalan di pihak perayu. Pernyataan ini sebenarnya hanya dinyatakan di dalam surat perayu bertarikh 19 Ogos 2014 kepada LD. Dalam afidavit sokongan perayu, dia sebenarnya menyatakan bahawa dia sedar bahawa perkara yang dilakukannya adalah salah, dia menyesali kesalahannya dan kesulitan serta masalah yang timbul kepada anak guamnya dan beliau menyesal dan memohon maaf atas perkara tersebut (lihat perenggan 28).

(3) Hakim Mahkamah Tinggi tidak mengambilkira tempoh tempoh masa perayu sepanjang tidak beramal setelah dikeluarkan dari Daftar. Perayu telah dilucutkan hak selama lebih kurang lapan tahun (dan bukan lima tahun seperti yang diputuskan oleh hakim) dan ini adalah tempoh masa yang mencukupi mengambilkira salah laku dan fakta bahawa perayu telah membayar sepenuhnya RM247,500 kepada peguam cara vendor dan menyelesaikan pemindahan harta itu kepada anak guamnya tidak lama selepas aduan kepada LD dibuat. Perayu juga menyatakan penyesalan di dalam afidavit sokongannya. Tiada pertuduhan jenayah terhadap perayu. Tiada juga sabitan atau hukuman. Mahkamah ini juga mengambil kira fakta bahawa perayu telah menganggur dan dia berusia 68 tahun dan mungkin tidak mempunyai banyak tahun lagi untuk beramal. Fakta ini seolah-olah tidak diambilkira oleh hakim Mahkamah Tinggi (lihat perenggan 29–32).

(4) Mahkamah bawahan juga memberikan pemberatan yang tidak wajar kepada aduan terdahulu yang dibuat terhadap perayu yang telah digantung kerana pengeluarannya dari Daftar. Tuduhan tatatertib berdasarkan aduan sebelum ini tidak boleh dikenakan terhadap seseorang secara ansuran terutamanya setelah dia dikembalikan ke

Daftar. Hakim Mahkamah Tinggi telah menyatakan kebimbangan bahawa perayu mungkin mengulangi salah lakunya. Walaubagaimanapun, kebimbangan itu yang dibangkitkan oleh responden, telah cukup ditangani oleh akujanji perayu di hadapan mahkamah ini bahawa sekiranya permohonannya untuk pengembalian dibenarkan, beliau tidak lagi bertindak sebagai penandatangan akaun mana-mana firma guaman di mana dia akan beramal (lihat perenggan 33–34).

(5) Testimoni dan sijil kelakuan baik daripada ahli-ahli kanan Majlis Peguam yang dikemukakan perayu untuk menyokong permohonan ini adalah mencukupi dalam keadaan kes itu untuk menunjukkan kesungguhan dan komitmen perayu untuk menegakkan dan mengekalkan standard tinggi Badan Peguam (lihat perenggan 35).

(6) Perayu telah memenuhi keperluan perubahan kelakuan, penyesalan dan pemulihan yang digariskan di dalam kes *Chan Chow Wang v Malaysian Bar* [1986] 2 MLJ 159 dan dengan itu adalah adil dan munasabah untuk mengembalikannya semula ke Daftar menurut keadaan kes itu tertakluk kepada akujanji perayu dan syarat bahawa dia tidak akan menjadi penandatangan kepada mana-mana akaun anak guam atau pejabat di mana-mana firma guaman di mana dia akan beramal (lihat perenggan 36).]

Cases referred to

Chan Chow Wang v Malaysian Bar [1986] 2 MLJ 159 (refd)
Chin Swee Onn, Re [1964] 1 MLJ 124 (folld)
Chiong Chin May Selena v Attorney General and another [2021] SGHC 167 (refd)
Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore [2009] 4 SLR 1018, HC (distd)
Majlis Peguam Malaysia v Ahmad Rushdi bin Omar [2017] 6 MLJ 70 ; [2017] 9 CLJ 413, CA (distd)
Nirmal Singh s/o Fauja Singh, Re [2001] 2 SLR(R) 494, HC (refd)
Paya Terubong Estates Sdn Bhd v Pusaka Warisan Sdn Bhd [1998] 2 MLJ 463 ; [1998] 2 CLJ 909, CA (refd)
Ram Kishan, Re [1992] 1 SLR(R) 260, HC (refd)
Reventharen a/l Suppiah v Majlis Peguam Malaysia [2022] MLJU 538 ; [2022] 9 CLJ 538, HC (refd)
Teoh Hooi Leng v Bar Council, Malaysia [1991] 2 MLJ 190, SC (refd)

Legislation referred to

Legal Profession Act 1976 ss 94(2)(a), 94(2)(b), 100(1)(b), 107(1)

Appeal from: *Reventharen a/l Suppiah v Majlis Peguam Malaysia* [2022] MLJU 538 (High Court, Kuala Lumpur)

Ranjit Singh (with Prisilla Chong) (Ranjit Singh & Yeoh) for the appellant.
Farez Jinnah (with Nadhirah Rahman) (Farez Jinnah) for the respondent.

Lim Chong Fong JCA:

INTRODUCTION

[1] This is an appeal on reinstatement of an advocate and solicitor who had been struck off from the Roll of Advocates and Solicitors ('Roll').

[2] The appellant is the advocate and solicitor concerned.

[3] The respondent is the Bar Council Malaysia constituted under the Legal Profession Act 1976 ('the LPA').

[4] We heard the appeal on 18 September 2023 and thereafter unanimously ordered the appellant be reinstated back to the Roll. The High Court order is set aside with no order as to costs

[5] We now provide below the grounds of our decision.

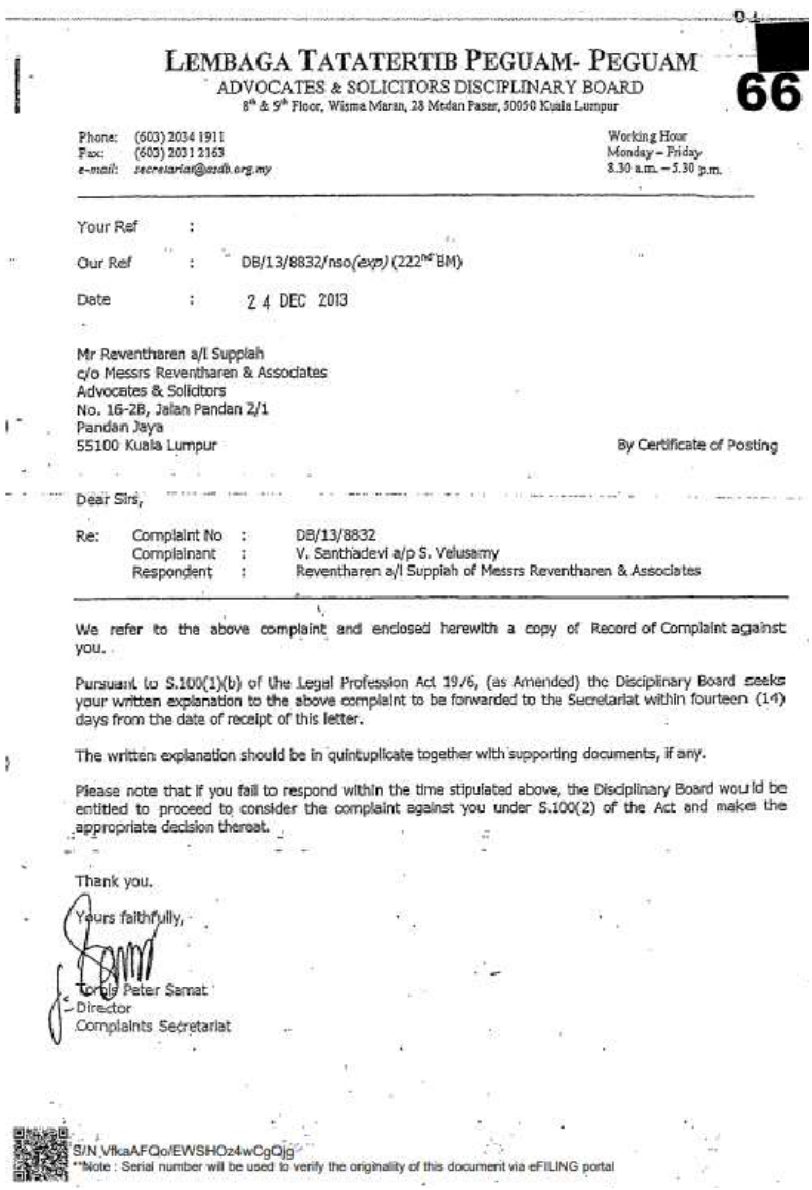
BACKGROUND FACTS

[6] The appellant was admitted as an advocate and solicitor of the High Court of Malaya on 9 February 1995 and practised as a sole proprietor under the firm name Messrs Reventharen & Associates since 23 February 1995.

[7] By a sale and purchase agreement dated 10 July 2012 ('agreement'), a V Santhadevi a/p S Velusamy ('complainant') who is the appellant's client purchased a property from a Syed Abdullah bin Syed Noh ('vendor').

[8] On 8 October 2013, the complainant lodged a complaint against the appellant to the disciplinary board constituted under the LPA ('DB') for his failure to transfer the balance sum of RM247,500 due under the agreement to the vendor's solicitors ('complaint').

[9] Consequently, the DB on 24 December 2013 forwarded a copy of the complaint to the appellant and requested for an explanation in accordance with s 100(1)(b) of the LPA. The aforesaid DB's letter is reproduced below:



LEMBAGA TATATERTIB PEGUAM- PEGUAM
ADVOCATES & SOLICITORS DISCIPLINARY BOARD
8th & 9th Floor, Wisma Maran, 38 Medan Pasar, 50050 Kuala Lumpur

66

Phone: (603) 2034 1911
Fax: (603) 2031 2163
e-mail: secretariat@ardb.org.my

Working Hour
Monday – Friday
8.30 a.m. – 5.30 p.m.

Your Ref :

Our Ref : DB/13/8832/nso(exp) (222nd BM)

Date : 24 DEC 2013

Mr Reventharen a/l Suppiah
c/o Messrs Reventharen & Associates
Advocates & Solicitors
No. 16-2B, Jalan Pandan 2/1
Pandan Jaya
55100 Kuala Lumpur

By Certificate of Posting

Dear Sirs,

Re: Complaint No : DB/13/8832
Complainant : V. Santhadevi a/p S. Velusamy
Respondent : Reventharen a/l Suppiah of Messrs Reventharen & Associates

We refer to the above complaint and enclosed herewith a copy of Record of Complaint against you.

Pursuant to S.100(1)(b) of the Legal Profession Act 1976, (as Amended) the Disciplinary Board seeks your written explanation to the above complaint to be forwarded to the Secretariat within fourteen (14) days from the date of receipt of this letter.

The written explanation should be in quintuplicate together with supporting documents, if any.

Please note that if you fail to respond within the time stipulated above, the Disciplinary Board would be entitled to proceed to consider the complaint against you under S.100(2) of the Act and make the appropriate decision thereat.

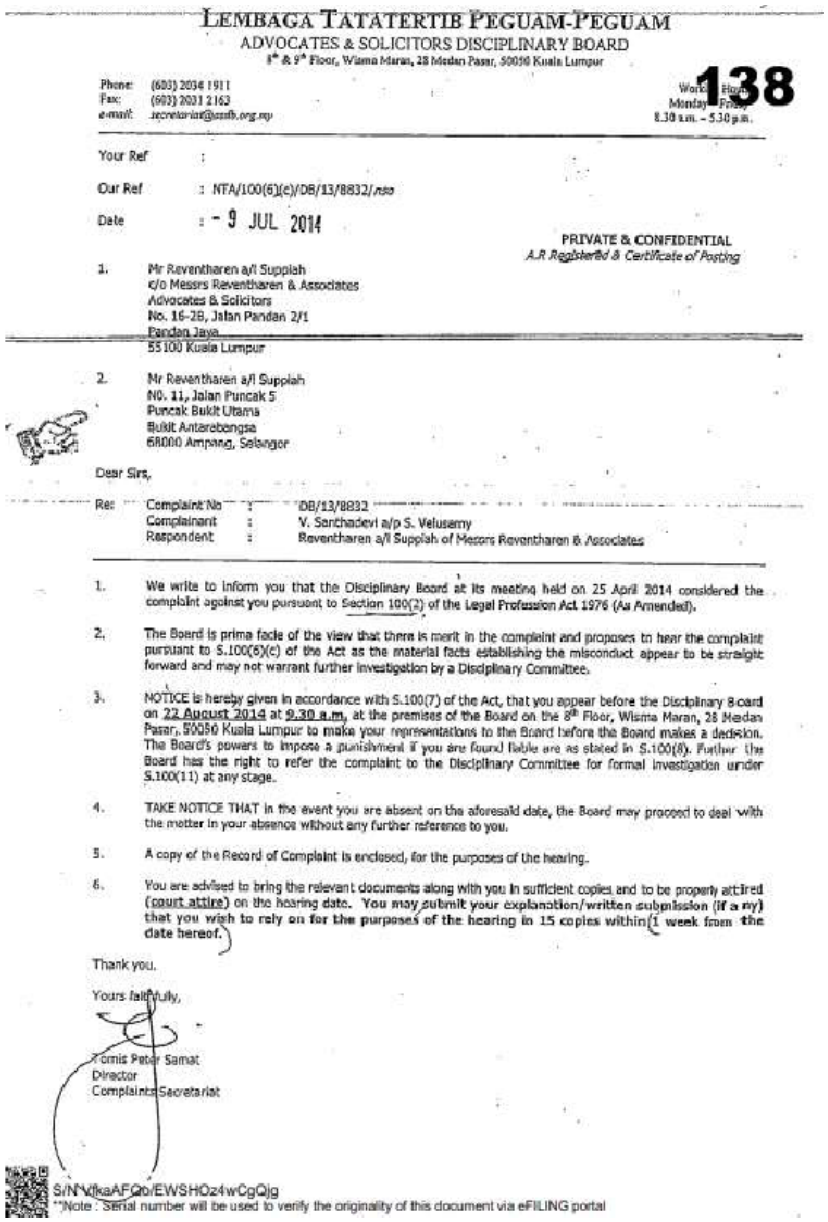
Thank you.

Yours faithfully,

Tengku Peter Samat
Director
Complaints Secretariat

S/N VfkaAFQo/EWSHOz4wCgQjg
**Note : Serial number will be used to verify the originality of this document via eFILING portal

[10] There was no explanation given by the appellant to DB on the complaint lodged against him. As a result, the DB proceeded to consider the complaint lodged against the appellant during the meeting on 25 April 2014 and prima facie found that there was merit in the complaint. The DB further proposed to hear the complaint on 22 August 2014 without the need for further investigation by a disciplinary committee. As such, a letter dated 9 February 2014 was issued to the appellant and the aforesaid letter is reproduced below:



LEMBAGA TATATERTIB PEGUAM-PEGUAM
ADVOCATES & SOLICITORS DISCIPLINARY BOARD
8th & 9th Floor, Wisma Maran, 28 Medan Pasar, 50050 Kuala Lumpur

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Phone: (603) 2034 1911
Fax: (603) 2031 2163
e-mail: secretariat@ssdb.org.my

Your Ref :
Our Ref : NTA/100(6)(c)/DB/13/8832/.nsa
Date : - 9 JUL 2014

PRIVATE & CONFIDENTIAL
A.R Registered & Certificate of Posting

1. Mr Raventharen a/l Supplah
c/o Messrs Raventharen & Associates
Advocates & Solicitors
No. 16-2B, Jalan Pandan 2/1
Pandan Jaya
55100 Kuala Lumpur

2. Mr Raventharen a/l Supplah
No. 11, Jalan Puncak 5
Puncak Bukit Utama
Bukit Antarabangsa
68000 Ampang, Selangor

Dear Sirs,

Re: Complaint No : DB/13/8832
Complainant : V. Santhadevi a/p S. Velusamy
Respondent : Raventharen a/l Supplah of Messrs Raventharen & Associates

1. We write to inform you that the Disciplinary Board at its meeting held on 25 April 2014 considered the complaint against you pursuant to Section 100(2) of the Legal Profession Act 1976 (As Amended).

2. The Board is prima facie of the view that there is merit in the complaint and proposes to hear the complaint pursuant to S.100(6)(c) of the Act as the material facts establishing the misconduct appear to be straight forward and may not warrant further investigation by a Disciplinary Committee.

3. NOTICE is hereby given in accordance with S.100(7) of the Act, that you appear before the Disciplinary Board on 22 August 2014 at 9.30 a.m. at the premises of the Board on the 8th Floor, Wisma Maran, 28 Medan Pasar, 50050 Kuala Lumpur to make your representations to the Board before the Board makes a decision. The Board's powers to impose a punishment if you are found liable are as stated in S.100(8). Further the Board has the right to refer the complaint to the Disciplinary Committee for formal investigation under S.100(11) at any stage.

4. TAKE NOTICE THAT in the event you are absent on the aforesaid date, the Board may proceed to deal with the matter in your absence without any further reference to you.

5. A copy of the Record of Complaint is enclosed, for the purposes of the hearing.

6. You are advised to bring the relevant documents along with you in sufficient copies and to be properly attired (court attire) on the hearing date. You may submit your explanation/written submission (if any) that you wish to rely on for the purposes of the hearing in 15 copies within 1 week from the date hereof.

Thank you.

Yours faithfully,

Tomis Peter Samat
Director
Complaints Secretariat

S/N: VjkaAFQo/EWSHOz4wCgQjg
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[11] The appellant on 19 August 2014 wrote to the DB admitting to his wrongdoing and informing that he had already paid the sum of RM247,500 to the vendor's solicitor and completed the transfer of the property to the complainant. The appellant's letter is reproduced below:

A

1 Ref No. NTA/100(6)(e)/db/13/8832/NSO

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[redacted]

Reventharen Suppiah
c/o M/s. Reventharen & Associates
No. 16-2B, Jalan Pandan 2/I,
Pandan Jaya,
55100 Kuala Lumpur.

B

I/We hereby acknowledge receipt of the original / duplicate copy of this letter / abovementioned document
Dated this day of 20
[redacted]

(19th August, 2014)

Disciplinary Board,
Lembaga Tatatertib Peguam-Peguam
Advocates & Solicitors DisciplinaryBoard
8th & 9th Floor,
WismaMaran,
28 Medan Pasar,
50050 Kuala Lumpur.

C

Dear Sirs,

D

Re: Complaint No. : DB/13/8832
Complainant : V.Santhadevi A/P S. Velusamy
Respondent : Reventharen A/L Suppiah of Messrs. Reventharen & Associates.

E

I stand before this Board to offer my humble apologies for my inexcusable behavior.

I have taken RM248,000.00 from the client's account. I have paid it back in full in November, 2013. Nevertheless I cannot and will not deny it. I now own up and take the blame for my wrongdoings and stand before this Board to face the consequences.

F

The reason and circumstances that led me to this grave error cannot excuse my wrong doings and I cannot sufficiently apologize to the Board or to the Malaysian Bar.

All my adult life I worked so hard to become a lawyer. Having gotten into the Bar, and having run a successful practice for almost two decades, I screwed up. I cannot deny that. As a professional lawyer I am aware of the confidence and trust bestowed upon me. I breached that trust and confidence. I have caused

G

2/....

H

S/N VfkaAFQo/EWSHOz4wCgQjg
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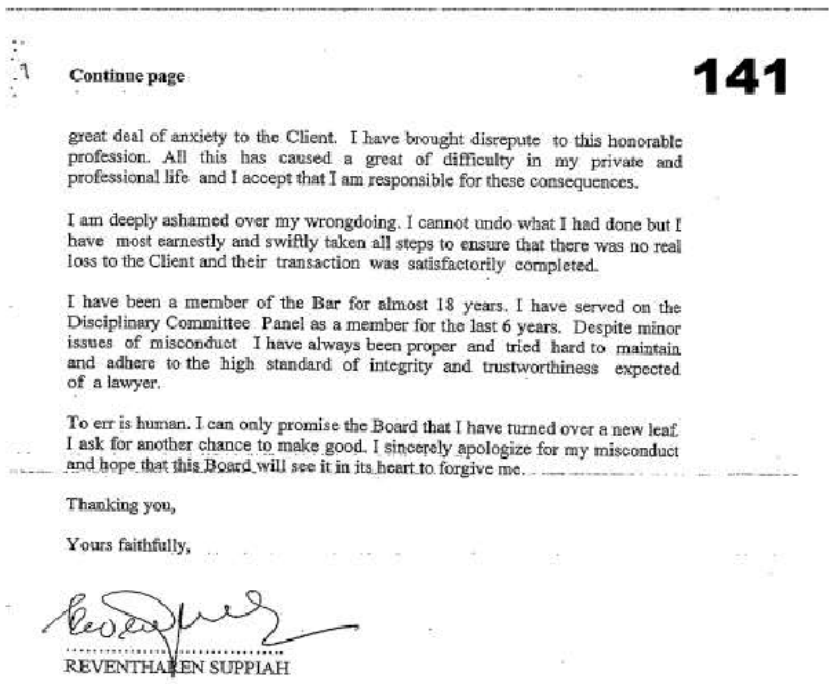

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great deal of anxiety to the Client. I have brought disrepute to this honorable profession. All this has caused a great of difficulty in my private and professional life and I accept that I am responsible for these consequences.

I am deeply ashamed over my wrongdoing. I cannot undo what I had done but I have most earnestly and swiftly taken all steps to ensure that there was no real loss to the Client and their transaction was satisfactorily completed.

I have been a member of the Bar for almost 18 years. I have served on the Disciplinary Committee Panel as a member for the last 6 years. Despite minor issues of misconduct I have always been proper and tried hard to maintain and adhere to the high standard of integrity and trustworthiness expected of a lawyer.

To err is human. I can only promise the Board that I have turned over a new leaf. I ask for another chance to make good. I sincerely apologize for my misconduct and hope that this Board will see it in its heart to forgive me.

Thanking you,

Yours faithfully,

REVENTHAREN SUPPIAH

[12] As the result, the DB summarily determined and informed the appellant on 28 August 2014 of their decision to strike the appellant off the Roll with effect from 12 September 2014.

[13] On 15 August 2017, the appellant informed the respondent and DB that he intends to apply to be reinstated as an advocate and solicitor and enquired whether that was any claim made against him from the Bar Council compensation fund.

[14] Since there was no claim made under the Bar Council compensation fund against him, the appellant on 28 November 2017 applied to the High Court to restore and reinstate his name to the Roll ('first reinstatement application').

[15] However, the High Court on 12 April 2018 dismissed the first reinstatement application.

[16] The appellant on 7 May 2018 appealed to the Court of Appeal against the aforesaid decision of the High Court but he subsequently withdrew the appeal.

[17] On 11 November 2019, the appellant again applied to the High Court to restore and reinstate his name to the Roll ('second reinstatement application').

AT THE HIGH COURT

[18] The appellant principally contended as follows as summarised by the learned High Court judge:

(a) he has all the while admitted to his misconduct and did not appeal against the DB's decision;

(b) he took all the necessary measures to ensure the complainant's matter was settled and no loss was suffered by the complainant;

(c) after being unemployed and unable to secure any gainful employment due to his age and having to rely on savings and support from his family members, from August 2016 to July 2017, he assisted his friend in establishing and running a college named Kolej IEWM and was appointed as the Chief Operating Officer which was a temporary position where he left the college after it became fully operational;

(d) he had obtained and provided testimonials and certificates of good conduct from senior members of the Bar and public persons known to him to confirm his past misconduct, regret and their support of his reinstatement to the Roll;

(e) he is truly penitent and regretful of his misconduct; and

(f) he should be allowed to see out of his remaining years of his life as a person who had acknowledged his wrong doing and punished for it and be given a second chance for the remainder of his life.

[19] However, the respondent counter-contended that the appellant's application is not fair and reasonable pursuant to s 107(1) of the LPA following *Teoh Hooi Leng v Bar Council, Malaysia* [1991] 2 MLJ 190 (SC) wherein Hashim Yeop Sani (CJ (Malaya)) held as follows:

The word 'fair' must necessarily mean that the decision must be fair firstly to the members of the public with whom the applicant will be renewing professional relations once readmitted because the law seeks to protect not only the profession but also the public from errant lawyers

The word 'fair' also requires that the decision must be fair to the court itself because when readmitted the appellant will be an officer of the court.

Last but not least the decision must be fair to the appellant ...

The duty of the court in a case like this is to exercise its discretion having regard to the materials available before it and the particular facts of the case. The question should be seen as an exercise of discretion according to particular facts of the case. It should never be regarded as a principle laid down as a rule of law that an advocate and solicitor who has been struck off the Roll for dishonesty can never be reinstated.

Section 107 of the Act requires that the decision should also be a reasonable decision. A reasonable decision is a decision which is based on reasonable grounds A reasonable decision must first of all be supported by cogent evidence and not one based on conjecture or speculation.

[20] The learned High Court judge, after due consideration, dismissed the second reinstatement application and stated, inter alia, as follows in the grounds of decision reported in *Reventharen a/l Suppiah v Majlis Peguam Malaysia* [2022] MLJU 538; [2022] 9 CLJ 538 ('decision'):

[15] In the instant matter, in expressing that he is ashamed for the misconduct that he has committed and that he has repented, the petitioner in his supporting affidavit avers that 'despite minor issues of misconduct I have always been proper and tried hard to maintain and adhere to the high standard of integrity and trustworthiness expected of a lawyer'. This court finds that at the very core of the matter, ie, the petitioner's breach of his client's trust where trust is the principle of which the legal profession is founded upon, such averment does not reflect remorse on the part of the petitioner. By making such averment, it is of the considered view that the petitioner is attempting to justify and trivialise a serious misconduct. The undertaking given by the petitioner to the court cannot be equated with the act of penitence or repentance when compared with such averment. It cannot be gainsaid that the petitioner is clearly remorseful and his undertaking that he will not repeat the same mistake and will do his utmost best to preserve the integrity of the legal profession is therefore doubted.

[16] The respondent has divulged and this court takes cognisance of the fact that apart from the striking off, there are six complaints lodged against the petitioner involving gross disregard of client's interest, unbefitting conduct and monetary dishonesty. These complaints are either kept in abeyance, reprimand, fine or withdrawn. According to the report by the respondent's secretary, in the event of the petitioner's restoration to the Roll, one of the complaints (Complaint Reference DB14 9542) will re-activate. It is of the considered view that the pending disciplinary complaint against the petitioner is relevant. There is therefore a pre-existing and/or fresh complaint after the striking off that has been held in abeyance against the petitioner. The complaints demonstrate the unbefitting

A conduct of the petitioner as an advocate and solicitor. It remains a question and grave concern whether the petitioner would not repeat the misconduct.

[17] Although it is true that the petitioner's disbarment period has been more than five years, there is nothing in law to state that the length of time that has lapsed is the sole criteria in considering restoration to the Roll.

B [18] In the instant matter, the petitioner had breached the fundamental foundation of relationship between a lawyer and his client which is founded upon trust. Relating to the complaint herein, it took the petitioner four months and eight days and some 17 months later from the date the balance purchase price was first paid into the petitioner's clients' account before he made restitution to the complainant. C Clearly, the restitution was an afterthought. The petitioner's misconduct was grave and having to scrutinise strictly such misconduct, this court cannot consider to restore the petitioner to the Roll solely on the amount of years that had lapsed or only on the weight of testimonials provided. The focus has to be on whether the petitioner has demonstrated remorse, repentance and rehabilitation.

D ...

[24] In finding that the petitioner has failed to show that he is remorseful, penitent and rehabilitated, the life expectancy of the petitioner is irrelevant where administration of justice, public interest and the interest of the legal profession are concerned. It must be borne in mind that reinstatement is an exception rather than E a rule. The petitioner has been disbarred for more than eight years now. Due to the gravity of the offence committed by the petitioner and his stand that what he had committed was 'minor issue of misconduct', it follows that he is not fully rehabilitated and will continue to pose a threat to society and will cast a pall of doubt over the integrity and reputation of the legal profession (see *Kalpanath Singh s/o Ram* F *Raj Singh v Law Society of Singapore* [2009] 4 SLR 1018). The fact that the petitioner is 66 years old is not a paramount consideration but his worthiness and reliability for the future are supreme more so in the profession where the attribute of trustworthiness must be upheld in all circumstances

G [25] In regard to the right to livelihood/restraint of trade, it must be emphasised of the well-entrenched principle that the ability to practice as an advocate and solicitor is not a right but a privilege afforded by the legislation specifically the LPA ...

...

[27] Premised on the above, this court is of the view that the petitioner has failed to H satisfy that he is a fit and proper person to be restored to the Roll. The misconduct of this nature is too prevalent and a strong message should be sent out to discourage potential offenders ...

I **[21]** The appellant is dissatisfied with the decision and had on 22 September 2021 appealed to the Court of Appeal.

FINDINGS OF THIS COURT

[22] Before us, the appellant focussed on four points wherein the learned High Court judge erred in fact and law in coming to the decision to dismiss the second reinstatement application, viz:

(a) failure to appreciate that the appellant did not in his supporting affidavit aver that his misconduct was a minor issue;

(b) failure to consider the appellant's penitence and rehabilitation throughout six years after his name was struck off from the Roll;

(c) failure to appreciate that the previous disciplinary complaints made against the appellant should have no bearing or little weight in the reinstatement proceedings; and

(d) failure to appreciate that the certificates of good character and testimonials produced by the appellant showed the appellant's penitence after his name was struck out.

[23] In opposition, the respondent counter-contended that the learned in accordance with s 107 of the LPA and trite case law.

[24] The primary statutory provision is s 107(1) of the LPA which reads:

> 107 High Court may restore an advocate and solicitor
>
> (1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll.

[25] In *Chan Chow Wang v Malaysian Bar* [1986] 2 MLJ 159, Harun J (later SCJ) held as follows in interpreting s 107(1) of the LPA:

> In re-admitting applicants to the Bar, the court has a duty to litigants and to the legal profession to ensure that such persons are of the highest integrity and honour. The court must also be satisfied, in the public interest, that the applicant is not likely to repeat these offences if he is re-admitted. The onus is therefore on the applicant to show that:
>
> (a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;
>
> (b) he is truly penitent; and
>
> (c) he has made restitution.

[26] Since this reinstatement application involves the exercise of discretion as provided in s 107(1) of the LPA, our duty here as an appellate court has been well explained by Gopal Sri Ram JCA (later FCJ) in *Paya Terubong Estates Sdn*

Bhd v Pusaka Warisan Sdn Bhd [1998] 2 MLJ 463; [1998] 2 CLJ 909 (CA) as follows:

> Although the decision whether a caveat ought to remain on the register is a matter within the discretion of the judge, it is like all other discretionary matters one that is required to be exercised judicially. One can, of course, quite well appreciate an appellate court's reluctance to disturb the primary exercise of discretion. This is because a court of appeal in a matter such as the present does not possess an original discretion, its initial function being one of review only. However, where, as in the present instance, it is amply demonstrated that the judge in whom the primary discretion is vested has failed to take into account relevant considerations it is the duty of this court to say so and to intervene and set matters right by an exercise of its own discretion.

[27] We started off reminding ourselves that every reinstatement case is unique and must be decided based on its particular and peculiar facts without preconception.

[28] Thus, in respect of the first point raised by the appellant, we find on review that the learned High Court judge has in para [15] of the grounds of decision seriously erred in mistakenly finding that the appellant stated in his affidavit in support of the second reinstatement application that 'his wrongdoings are minor issues of misconduct' ; hence did not reflect remorse on the part of the appellant. This phrase was in fact stated only in the appellant's earlier letter dated 19 August 2014 addressed to the DB. In the appellant's affidavit in support, he actually stated as follows:

> 12. Saya sedar bahawa apa yang saya telah lakukan adalah salah. Saya sesungguhnya menyesal dan meminta maaf keatas semua kesalahan saya.
>
> Saya menyesal kesukaran yang saya menyebabkan kepada pengadu sejauh mana beliau telah hilang kepercayaan kepada saya sambil melaporkan perkara ini kepada Majlis Peguam dan Majlis Peguam mengambil tindakan terhadap saya. Saya menyesal kesilapan saya yang telah menyebabkan banyak kebimbangan dan kesusahan kepada pengadu. Ini adalah salah laku saya sendiri dan tanggung jawab saya.

[29] Next as to the appellant's second point on his penitence and rehabilitation since he was struck off from the Roll, we see in paras [17] and [18] of the grounds of decision that the learned High Court judge has downplayed the consideration of length of period of disbarment by merely stating that the length of time of five years is not the sole criteria. We however noted that the appellant has now been disbarred for some eight years and we objectively find that this length of time of disbarment is adequate in light of the misconduct committed considering that the appellant wholly paid the sum of RM247,500 to the vendor's solicitor and completed the transfer of the property to the complainant fairly soon after the complaint was lodged. That

notwithstanding, the appellant has also unreservedly tendered his penitence in his affidavit in support of the second reinstatement application.

[30] We are mindful of the respondent's contention that there is insufficient lapse of time between the dismissal of the appellant's first reinstatement application and the second reinstatement application relying on the Singapore cases of *Re Ram Kishan* [1992] 1 SLR (R) 260 and *Re Nirmal Singh s/o Fauja Singh* [2001] 2 SLR (R) 494 but its our view that the LPA did not prescribe a mandatory requisite lapse of time as well as the facts of the Singapore cases are dissimilar. The provision in s 94(2)(b) of the LPA relied by the respondent is inapplicable to a reinstatement application after the advocate and solicitor has been struck off the roll pursuant to s 94(2)(a) of the LPA.

[31] Moreover, we find there were no criminal charges preferred against the appellant; hence there was neither conviction nor sentence meted on the appellant. This is unlike in the other cases where the disbarred advocate and solicitor also served jail sentence where that person absconded with client's money and later caught and charged for criminal breach of trust as seen in the Singapore case *Chiong Chin May Selena v Attorney General and another* [2021] SGHC 167 relied by the respondent.

[32] We also took into consideration that the appellant is presently unemployed. He is 68 years old and may not have many more years left to practice. This has seemingly not been appreciated by the learned High Court judge in para [24] of the grounds of decision.

[33] Moving on to the appellant's third point, we find that the learned High Court judge had in paras [16] and [24] of the grounds of decision given unduly excessive weight on the previous complaints made against the appellant which have been suspended and kept in abeyance because of the appellant having already been struck off from the Roll. We appreciated the learned High Court Judge was concerned that the appellant would repeat his misconduct. Before us, the appellant has unequivocally given his undertaking to this court that should he be restored and reinstated to the Rolls, he undertakes not to be a signatory of any client's account of the legal firm in which he will be practising. It is, in other words, plain to us that the appellant cannot be a sole-proprietor but must work as a legal associate/assistant or otherwise as a partner without authority or power to sign any client's account or office account of a legal firm. In the premises, we find the learned High Court judge's concern as well as the respondent's public duty to maintain zero tolerance towards any risk of client's money being wrongly used or unaccounted have been adequately addressed and safeguarded through his undertaking given to this court. We heeded the respondent's caution that there must be no risk of repetition of the misconduct

by the appellant when he resumes law practice following *Re Chin Swee Onn* [1964] 1 MLJ 124.

[34] We are also of the view that disciplinary charges based on complaints should not be preferred in instalments one after the other, especially to defer and then prefer another charge on a prior complaint after the reinstatement of the advocate and solicitor back to the Roll. We are aware of the respondent's contention that the appellant suppressed in his second reinstatement application the fact that the complainant also made a complaint that she was 'locked up' in the appellant's office in her pursuit to resolve the non-payment of the RM247,500 to the vendor's solicitors but we are of the view that this is interconnected with the principal complaint that resulted in him being struck off from the Roll. Thus, we find that the absence of disclosure of this fact is not fatal contrary to that in the Singapore case of *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore* [2009] 4 SLR 1018 relied by the respondent.

[35] Finally, with regard to the appellant's fourth point that the certificates of good character and testimonials tendered demonstrated his penitence, we find that the testimonials from the senior members of the Malaysian Bar are sufficient in the circumstances of the case where they have stated that they are convinced as to his penitence and commitment to uphold and maintain the high standards of the Malaysian Bar. We noted that there is no mandatory format for the certificate of good character/testimonial prescribed in the LPA or rules made thereunder for purposes of reinstatement; thus, the appellant cannot be faulted in adducing them as so presented to the court. We are also mindful of the findings of this court in *Majlis Peguam Malaysia v Ahmad Rushdi bin Omar* [2017] 6 MLJ 70; [2017] 9 CLJ 413 but we find the case facts and circumstances there that disclosed numerous serious misconducts are starkly different and distinguishable.

CONCLUSION

[36] For the foregoing reasons, we are of the considered view that this is a fit and proper case for appellate intervention to restore and reinstate of the appellant back to the Roll. Put simply, we are satisfied that the appellant has met the requirements of change of character, penitence and restitution set out in *Chan Chow Wang* and accordingly it is fair and reasonable to reinstate him in the circumstances of this case subject always to his undertaking and conditional upon him not to be a signatory of any client's or office account of the legal firm in which he is practicing.

[37] The appeal is therefore allowed as so ordered.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh